UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

URSULA P.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. 2:22-CV-741-DWC

ORDER REVERSING AND REMANDING DEFENDANT'S DECISION TO DENY BENEFITS

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of Defendant's denial of Plaintiff's applications for supplemental security income ("SSI") and disability insurance benefits ("DIB"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 2.

After considering the record, the Court concludes the Administrative Law Judge erred in evaluating the opinion of Drs. Andersen, Yun, and Knapp. Had the ALJ properly considered these opinions, the residual functional capacity assessment may have included different

limitation. The ALJ's error is therefore harmful, and this matter is reversed and remanded, pursuant to sentence four of 42 U.S.C. § 405(g) to the Acting Commissioner of Social Security ("Commissioner") for further proceedings consistent with this Order.

FACTUAL AND PROCEDURAL HISTORY

On April 25, 2018, and May 2, 2018, Plaintiff filed applications for SSI and DIB respectively, alleging disability as of October 4 and 5, 2004, which she later amended to July 26, 2016. *See* Dkt. 8, Administrative Record ("AR") 213, 210, and 779. The application was denied upon initial administrative review and on reconsideration. *See* AR 137-40, 146-8, 143-5. At Plaintiff's request, Administrative Law Judge ("ALJ") C. Howard Prinsloo held a hearing on June 18, 2019. *See* AR 38-70. On July 17, 2019, the ALJ issued a decision finding denying benefits. *See* AR. 17-31. On May 26, 2020, the Appeal's Council denied Plaintiff's request for review making the ALJ's decision the final decision of the Commissioner. *See* AR 1-6; 20 C.F.R. § 404.981, § 416.1481.

Plaintiff filed a complaint in this Court. On April 14, 2021, the United States District Court, Western District of Washington reversed the ALJ's decision and remanded the matter for further administrative proceedings. AR. 870-880. This Court concluded that the ALJ erred in evaluating the opinions of Drs. Andersen, Yun, and Knapp because the ALJ's assessments of the opinions were not supported by substantial evidence. AR. 873-880. This Court also concluded the ALJ shall reconsider the opinion evidence as it relates to Plaintiff's testimony. AR. 880.

On remand, the ALJ held a hearing on February 15, 2022. AR. 803-828. On March 23, 2022, the ALJ issued a second decision denying benefits. AR. 779-96. The ALJ found severe impairments of bipolar disorder, anxiety disorder and personality disorder but found Plaintiff does not have an impairment or combination of impairments that meet or equal the severity of

listings 12.04, 12.06, and 12.08. *See* AR 782-5. Next, the ALJ found Plaintiff had the residual functional capacity ("RFC") to perform a full range of work at all exertional levels except Plaintiff is limited to work with superficial and occasional contact with supervisors, co-workers, and the public and work limited to simple and routine tasks in a predictable workplace environment with well-defined workplace expectations. *See* AR 785. The ALJ found Plaintiff is unable to perform her past relevant work but, in reliance on the vocational expert's testimony, the ALJ concluded a significant number of jobs exist in the national economy that Plaintiff can perform, considering her age, education, work experience, and residual functional capacity. *See* 794-5. As a result, the ALJ concluded Plaintiff has not been disabled from July 26, 2016, through March 23, 2022, the date of the ALJ's decision. *See* AR 796.

On June 2, 2022, Plaintiff filed a complaint in this Court seeking judicial review of ALJ Prinsloo's February 15, 2022 decision. Dkt. 4. In Plaintiff's Opening Brief, Plaintiff maintains the ALJ erred by: (1) failing to provide legally sufficient reasons for rejecting the opinions of the examining physicians who assessed limitations from her mental impairments; and (2) failing to provide legally sufficient reasons for rejecting Plaintiff's complaints regarding the limiting effects of her mental impairments. Dkt. 13 at 1. Plaintiff only requests review of the ALJ's assessment of her limitations related to her mental impairments. Dkt. 13 at 4.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Biestek v. Berryhill, 139 S. Ct. 1148, 1154 (2019) (citations omitted). "We review only the reasons provided by the ALJ in the disability determination and may not affirm the ALJ on a ground upon which he did not rely." *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014) (citation omitted).

DISCUSSION

I. Whether the ALJ properly evaluated the medical opinion evidence.

Plaintiff argues that the ALJ failed to provide legally sufficient reasons for rejecting the opinions of every examining physician who assessed limitations from her mental impairments, including Drs. Andersen, Yun, and Knapp. Specifically, Plaintiff argues that: 1) the ALJ relied on reasons that the Court previously considered and rejected; 2) the ALJ's additional reasons are not legally sufficient and not supported by substantial evidence; and 3) every examining physician's opinion is consistent with each other, unlike the state contracted DDS opinions relied on by the ALJ. Dkt. 13 at 4. The Commissioner responds that "[u]nlike the prior ALJ decision, this time the ALJ explicitly discussed observations of these medical sources and found they were not supportive of [the] limitations given the record as a whole." Dkt. 14 at 12.

The regulations regarding the evaluation of medical opinion evidence have been amended for claims filed on or after March 27, 2017. *Revisions to Rules Regarding the Evaluation of Medical Evidence* ("*Revisions to Rules*"), 2017 WL 168819, 82 Fed. Reg. 5844, at *5867-68; *5878-79 (Jan. 18, 2017). Since Plaintiff filed her claim after that date, the new regulations apply. *See* 20 C.F.R. §§ 404.1520c, 416.920c. Under the revised regulations, ALJs "will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s). . . ." 20 C.F.R. §§ 404.1520c(a), 416.920c(a). Instead, ALJ's must consider every medical opinion or prior administrative medical

findings in the record and evaluate each opinion's persuasiveness using the factors listed. *See* 20 C.F.R. § 404.1520c(a), 416.920c(a). The two most important factors are the opinion's "supportability" and "consistency." *Id.* ALJs must explain "how [they] considered the supportability and consistency factors for a medical source's medical opinions or prior administrative medical findings in [their] . . . decision." 20 C.F.R. §§ 20 C.F.R. 404.1520c(b)(2), 416.920c(b)(2). "Supportability means the extent to which a medical source supports the medical opinion by explaining the 'relevant . . . objective medical evidence.'" *Woods v. Kijakazi*, 32 F.4th 785, 791-2 (9th Cir. 2022) (citing 20 C.F.R. § 404.1520c(c)(1)); *see also* § 416.920c(c)(1). "Consistency means the extent to which a medical opinion is 'consistent . . . with the evidence from other medical sources and nonmedical sources in the claim.'" *Woods*, 32 F.4th at 792 (citing 20 C.F.R. § 404.1520c(c)(2)); *see also* § 416.920c(c)(2).

A. Dr. Andersen

Psychologist Dr. Andersen examined Plaintiff on September 17, 2015. *See* AR 343-51. Dr. Andersen's evaluation consisted of a clinical interview, a review of the medical record, and a mental status examination. *Id*. Based on this evaluation, Dr. Andersen diagnosed Plaintiff with attention deficit hyperactivity disorder ("ADHD"), unspecified bipolar and anxiety disorders, borderline personality disorder, and a history of marijuana use. *See* AR 349. Dr. Andersen opined Plaintiff would be able to understand and remember instructions of moderate complexity, but would have difficulty carrying out tasks, and would have marked difficulties in organizing her time, pacing herself, avoiding distraction, and getting tasks done within the required timeframe, if she were left to work independently. *See* AR 350.

Dr. Andersen added that if Plaintiff were closely supervised, she would likely react angrily to efforts to control or structure her time and would react angrily to even minor

frustrations. *Id*. Dr. Andersen further opined that Plaintiff would have markedly conflicted relationships with others in the workplace due to affective instability and irritability and would have great difficulty working collaboratively with others. *Id.* Dr. Andersen stated that irritability and impulsivity would impair Plaintiff's judgment, and that Plaintiff would likely react impulsively when confronted with unforeseen problems. *Id.*

The ALJ found Dr. Andersen's September 17, 2015 opinion, and the opinions of two other examining psychologists[1] from 2014 and 2015, "not persuasive," reasoning that: 1) the opinions were "generated well prior to the current period at issue"; 2) Plaintiff had substantial gainful activity after these opinions were offered; and 3) the opinions are inconsistent with objective evidence of Plaintiff's "ability to appropriately engage, converse, behave, and manage herself." *See* AR 791. The ALJ recognized that other subsequent consultative examiners from the relevant period also opined that Plaintiff had marked and severe impairments. *Id*. However, the ALJ also found those opinion unpersuasive because the ALJ "found the psychological opinions of the state agency reviewers . . . to be more consistent with the longitudinal record." *Id*.

With respect to the ALJ's reasoning that Dr. Andersen's opinion is too remote in time, this Court concluded in its prior Order that Dr. Andersen's opinion, given its consistency with opinions rendered by other mental health examiners during the current period at issue, was "significant, probative evidence that provides valuable, detailed information concerning the extent and nature of Plaintiff's work-related mental health limitations during the period at issue,

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[1] On May 28, 2014, Dr. Kouzes opined Plaintiff had marked limitations in her ability to: complete a normal workday and workweek without interruptions from psychologically based symptoms; and maintain appropriate behavior in the workplace. *See* AR 791; *see also* 432-436. On August 25, 2015, Dr. Widlan opined Plaintiff had marked limitations in her ability to: adapt to changes in a routine work setting; communicate and perform effectively in a work setting; and complete a normal workday and workweek without interruptions from psychologically based symptoms. *See* AR 791; *see also* AR 437- 441.

and the fact that it was rendered shortly before Plaintiff's disability onset date cannot serve as a valid reason for discounting it." *See* AR 874. Dr. Andersen's opinion is also consistent with the two other opinions rendered during the same time period. *See* footnote 1. The ALJ has not provided any new rationale that would convince this Court to come to a different conclusion.

With respect to the ALJ's reasoning that Dr. Andersen's opinion is unpersuasive because Plaintiff engaged in substantial gainful activity during the period at issue, this Court concluded in its prior Order that this "is consistent with her work history, which indicates that she has difficulty maintaining employment for an extended period . . . and is also consistent with Dr. Andersen's opinion concerning Plaintiff's work-related mental limitations." *See* AR 876. This Court further concluded that Plaintiff's "ability to run her own photography business cannot serve as a valid reasoning for discounting Dr. Andersen's opinion given that it is unclear whether Plaintiff's business ever generated income." *Id*. The ALJ has not provided any new rationale that would convince this Court to come to a different conclusion.

Unlike in the ALJ's previous decision, the ALJ also found Dr. Andersen's and the two other opinions from that time period unpersuasive because the marked limitations were inconsistent with the treatment record and objective evidence. *See* AR 791. Specifically, the ALJ found that the marked limitations in Plaintiff's ability to complete a normal workday, maintain appropriate behavior, adapt, and communicate to be inconsistent with treatment records. *Id*. In support, the ALJ cited therapy records showing Plaintiff regularly engaged well, offered her thoughts and asked questions during her therapy sessions, presented as engaged and open to conversation, demonstrated appropriate behavior, and communicated effectively. *See* AR 791.

While an inconsistency with the medical record is a valid reason to find an opinion unpersuasive, in this case the ALJ's citations are selective, ignoring numerous treatment notes

that would support Dr. Andersen's opinion of marked limitations and ignoring supportive evidence in the selected citations. *See e.g.,* AR 450 (cooperative, voiced increase in energy, is being mindful of mania); AR 452 (high anxiety); AR 455 (cooperative, but impaired insight, anxious, agitated); AR 461 (cooperative, depressed, with anxiety); AR 738 (cooperative but guarded/suspicious and with impaired judgement and insight); AR 739 (mood depressed, anxious, angry, irritated); AR 747 (cooperative behavior, but with some pressured speech, some hypomania, and anxious mood); AR 748 (calm behavior, but with anxious/irritated mood, restricted affect range to anger/irritation which is congruent w/ ct's history of anxiety); AR 758 (engaged, but irritated); *Id*. (reserved and ornery [sic]); AR 759 (engaged and open, but also presented some frustration); AR 1039 (cooperative, with limited eye contact, fiddling with nails during session, irritable, fair judgment). The fact that Plaintiff would cooperate and engage in her mental health treatment does not necessarily relate to Dr. Andersen's opinion that Plaintiff's affective instability and irritability would markedly affect her interaction with coworkers and supervisors, would impair her judgment, and would likely react impulsively when confronted with unforeseen problems.

While the Commissioner notes that an ALJ's conclusion must be upheld "if evidence is susceptible to more than one rational interpretation," Dkt. 14 at 13 (citing *Woods*, 32 F.4th at 788), a Court "cannot affirm . . . 'simply by isolating a specific quantum of supporting evidence,' but 'must consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion.'" *Attmore v. Colvin*, 827 F.3d 872, 875 (9th Cir. 2016) (citing *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999)). The Ninth Circuit has instructed that ALJs, in composing disability determination decisions, "use these two terms of art— 'consistent' and 'supported' —with precision." *Woods*, 32 F.4th at 793 n. 4. Thus, under

the new regulations an ALJ cannot reject medical opinions or prior administrative medical findings as inconsistent or unsupported without providing an explanation supported by substantial evidence. *See Woods*, 32 F.4th at 792.

Therefore, the Court concludes the ALJ erred in evaluating the opinion evidence. *See Holohan v. Massanari*, 246 F.3d 1195, 1207 (9th Cir. 2001) (concluding the ALJ erred by selectively picking some entries in the medical record while ignoring others); *Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014) (stating an ALJ is not permitted to "cherry-pick" physician's observations without considering context); *Garrison v. Colvin*, 759 F.3d 995, 1018 n. 23 (9th Cir. 2014) (citation omitted) (stating "[t]he ALJ was not permitted to 'cherry pick' from those mixed results to support a denial of benefits. . . . The very nature of bipolar disorder is that people with the disease experience fluctuations in their symptoms, so any single notation that a patient is feeling better or has had a 'good day' does not imply that the condition has been treated.").

The ALJ also found that the medical opinions were inconsistent with her ability to live alone, go out alone, use public transportation, shop in stores, manage her money, and drive. The ALJ's generalized assertion about Plaintiff's activities is not sufficient to undermine medical opinions regarding her specific abilities in a work setting. *See Lindsay K. v. Comm'r of Soc. Sec.*, No. C21-05033-MAT, 2022 WL 407387, at *10 (W.D. Wash. Feb. 10, 2022) (activities of daily living including managing self-care, cooking, performing light household chores, yardwork, driving, shopping, and running errands does not undermine Plaintiff's allegations of debilitating symptoms from anxiety and mental impairments and these activities are not clearly transferable to a work setting); *but see Ahearn v. Saul*, 988 F.3d 1111, 1117 (9th Cir. 2021) (concluding the ability to play video games and watch television for sustained periods, to use a library computer,

to use public transportation, to shop at stores, to perform personal care, to prepare meals, to socialize with friends, and to perform household chores provide substantial evidence to discredit Plaintiff's testimony); *McClain v. Halter*, 10 F. App'x 433, 437 (9th Cir. 2001) (citation omitted) (evidence that Plaintiff is able to socialize or perform some household chores is not determinative of disability); *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (citations omitted) (Courts "have recognized that disability claimants should not be penalized for attempting to lead normal lives in the face of their limitations"); *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (quoting *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005)) (stating the ALJ "must make 'specific findings relating to the daily activities' and their transferability to conclude that a claimant's daily activities warrant an adverse credibility determination.").

Therefore, the Court concludes the ALJ's finding of an inconsistency between Dr. Andersen's medical opinion and the treatment record and objective evidence is not supported by substantial evidence.

B. Dr. Yun

Dr. Jenna Yun, Ph.D., examined Plaintiff for the Washington Department of Social and Health Services ("DSHS") on July 26, 2016. *See* AR 560-65. Dr. Yun's evaluation consisted of a clinical interview, a mental status examination, and a review of an August 25, 2015 opinion from David Widlan, (Ph.D.). *See* AR 560. Based on this examination, Dr. Yun opined Plaintiff would have a range of moderate, marked, and severe[2] work-related mental limitations, and Plaintiff's overall degree of limitation would be severe. *See* AR 563. Dr. Yun assessed Plaintiff would have

[2] A moderate limitation means "significant limits on the ability to perform one or more basic work activity." *See* AR 562. A marked limitation means "a very significant limitation on the ability to perform one or more basic work activity." *Id*. A severe limitation means "an inability to perform the particular activity in regular competitive employment." *Id*.

severe limitations in completing a normal workday and workweek without interruptions from psychologically based symptoms; maintaining appropriate behavior in the workplace; and communicating and performing effectively in the work setting. *Id*.

The ALJ found that Dr. Yun's opinion was "not persuasive," reasoning that: 1) it was inconsistent with the longitudinal record showing Plaintiff presented as engaged and open to conversation with appropriate behavior and ability to communicate; 2) it was not supported by Dr. Yun's own examination findings; 3) Dr. Yun only reviewed one 2015 evaluation before assessing Plaintiff's opinion; 4) it was inconsistent with her ability to live alone, go out alone, use public transportation, shop in stores, manage her money, and drive; and 5) it was inconsistent with the state agency opinions, which the ALJ found more persuasive. AR. 788-9.

With respect to the ALJ's first reason, an inconsistency with the medical record can serve as a valid reason to find an opinion unpersuasive. *See* 20 C.F.R. §§ 404.1520c(c)2, 416.920c(c)2. However, the ALJ selectively cited many of the same records as cited for finding Dr. Andersen's opinion inconsistent, which the Court concluded is not substantial evidence. *See Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014) (stating that an ALJ is not permitted to "cherry-pick" physician's observations without considering context).

With respect to the ALJ's reasoning that Dr. Yun's opinion is not supported by his own exam finding, the Court addressed this issue in its previous Order. *See* AR 877-8. The Court concluded, while the marked and severe limitation are not consistent with the results of her mental status examination, Dr. Yun's opinion is consistent with her other clinical findings that Plaintiff would have a range of "severe" mental health symptoms including psychomotor agitation, inflated self-esteem or grandiosity, racing thoughts, risky behavior, anger/aggression/irritability, affective instability, a tendency to minimize problems, a low

tolerance for others, and negative relationships. *See* AR 878. The ALJ now cites records describing Plaintiff as having no racing thoughts, grandiosity or excessive activity, and that her mood is well managed. However, Dr. Yun describes these symptoms as cyclic. AR 562. "Cycles of improvement and debilitating symptoms are a common occurrence, and in such circumstances[,] it is error for an ALJ to pick out a few isolated instances of improvement over a period of months or years and to treat them as a basis for concluding a claimant is capable of working." *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014). The ALJ also failed to address Dr. Yun's other clinical findings for consistency, including those described as pervasive, rather than cyclic. *See* AR 562. As the Court noted with respect to Dr. Andersen, the ALJ's citations were selective, and ignored records that are consistent with and support Dr. Yun's opinion of Plaintiff's chronic anger, aggression, irritability, and mood and affective instability.

With respect to the ALJ's finding that Dr. Yun only reviewed the opinion of Dr. Widlan before assessing Plaintiff's opinion, the Court already addressed this finding in its previous Order. *See* AR 878. The Court noted that, while Dr. Yun reviewed Dr. Widlan's opinion from 2015 as part of her evaluation, "there is no evidence that she relied primarily on Dr. Widlan's opinion" and his opinion, which "was rendered less than a year before Plaintiff's amended onset date, can serve as significant, probative evidence concerning Plaintiff's functional capacity during the period at issue." *See* AR 878. Dr. Yun's evaluation was also supported by a clinical interview and clinical findings based on mental status examination.

With respect to the ALJ's finding that Dr. Yun's opinion was inconsistent with her ability to live alone, go out alone, use public transportation, shop in stores, manage her money, and drive, this Court already addressed this issue with respect to Dr. Andersen's opinion. The ALJ's generalized assertion about Plaintiff's activities is not sufficient to undermine medical opinions

regarding her specific abilities in a work setting. *See Lindsay K.*, 2022 WL 407387, at *10; *Orn,* 495 F.3d at 639 (citation omitted) (ALJ must make specific findings relating to the daily activities and their transferability to warrant an adverse credibility determination.)".

Next, the ALJ reasoned that Dr. Yun's opinion was unpersuasive because it was inconsistent with the state agency opinions, which the ALJ found more persuasive. Consistency with other medical opinions can serve as a valid reason to find an opinion unpersuasive. *See* 20 C.F.R. §§ 404.1520c(c)2, 416.920c(c)2. Here, the ALJ found the opinions of state non-examining consultants, Michael Regrets, Ph.D. and Matthew Comrie, Psy.D., at the initial administrative review and on reconsideration "consistent with and supported by the longitudinal evidence of record including the large amount of evidence received at the hearing level that included evidence generated may years prior." *See* AR 788. Both physicians recognized Plaintiff has anger problems, is irritable, and is quick to anger. *See* AR 137-40, 146-8, 143-5. They both opined that Plaintiff's "contact with the public, coworkers and supervisors should be limited to superficial and occasional" and "she would function best in a predictable and simple routine environment with well-defined expectation." *Id*. They further opined that "her cognitive function is overall intact" and "she remains able to engage in both simple and more complex tasks within an average work week." *Id*.

The specific reasons the ALJ gave for finding these opinions persuasive is Plaintiff has been able to perform work at substantial gainful activity levels during the relevant period and that these physicians are experts in SSA-program physical disability evaluation. *See* AR 788. However, the ALJ did not determination whether Plaintiff's short-term work attempts during that period could be considered "unsuccessful work attempts," which is consistent with her work history and supports that she has difficulty maintaining employment due to a combination of her

mental impairment. *See* AR 221-225. This is consistent with Dr. Andersen's and Dr. Yun's opinion with respect to her mental impairments. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1038 (9th Cir. 2007) ("It does not follow from the fact that a claimant tried to work for a short period of time and, because of his impairments, failed, that he did not then experience pain and limitations severe enough to preclude him from maintaining substantial gainful employment."). "In fact, such evidence in some circumstances may support allegations of disabling symptoms." *Id.* (*citing Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989)).

In addition, the ALJ failed to consider or discuss the consistency between Dr. Yun's opinion and the opinions of all the other examining physicians, including the three opinions rendered prior to the relevant period (Dr. Andersen, Dr. Widlan, and Dr. Kouzes) and the two opinions rendered by Dr. Knapp during the relevant period.

Therefore, the Court concludes that the ALJ's finding that Dr. Yun's opinion was "not persuasive," is not supported by substantial evidence.

C. Dr. Knapp

Dr. Geordie Knapp evaluated Plaintiff on February 5, 2018. *See* AR 367-71; 566-581. Dr. Knapp's February 5, 2018 evaluation consisted of a clinical interview, a mental status examination, a review of the medical record, and psychological testing. Based on this evaluation, Dr. Knapp opined that Plaintiff would have a range of moderate, marked, and severe mental limitations, and that her overall degree of limitation was severe. *See* AR 368-69, 567-68. Dr. Knapp opined Plaintiff had severe limitations in performing activities within a schedule, maintaining regular attendance, and being punctual within customary tolerances without special supervision; completing a normal workday and workweek without interruptions from

psychologically based symptoms; maintaining appropriate behavior in the workplace; and communicating and performing effectively in the work setting. *Id*.

Dr. Knapp's also evaluated Plaintiff on September 2, 2021. *See* AR 1157-62. The evaluation was based on a telephonic clinical interview with Plaintiff and a review of his previous evaluation. *See* AR 1157. Dr. Knapp again found a range of moderate, marked, and severe mental limitations, and opined that her overall limitation was severe. *See* AR 1159. Dr. Knapp opined Plaintiff had severe limitations in performing activities within a schedule, maintaining regular attendance, and being punctual within customary tolerances without special supervision; completing a normal workday and workweek without interruptions from psychologically based symptoms; and communicating and performing effectively in the work setting. *Id*. However, Dr. Knapp reduced his assessment to a marked, rather than severe, limitation in maintaining appropriate behavior in the workplace. *Compare* AR 568 to 1159.

The ALJ found that Dr. Knapp's opinions were "not persuasive," reasoning that: 1) they were not consistent with the longitudinal showing Plaintiff engaged well, offered her thoughts, and asked questions during therapy sessions; 2) they were not supported by Dr Knapp's own examination findings; 3) they were based on a one-time examination and did not review evidence outside the 2009, 2014, and 2018 one-time evaluations; 4) they were inconsistent with her ability to live alone, go out alone, use public transportation, shop in stores, manage her money, and drive; 5) they were inconsistent with the state agency opinions, which the ALJ found more persuasive; and 6) Dr. Knapp noted that her physical impairments are a primary impediment to employment. *See* AR. 790-1.

The ALJ found Dr. Knapp's opinion "not persuasive" for many of the same reasons the ALJ discounted Dr. Yun's opinion. Therefore, the Court concludes that the ALJ's findings are

not supported by substantial evidence. For the reasons discussed above, the Court concludes that the ALJ's assessment of Dr. Knapp's opinions is not supported by substantial evidence. *See supra* Sections I. A. and B.

In summary, the Court concludes that the ALJ erred in assessing the examining physician's medical opinion evidence. Dr. Andersen's opinion, with respect to Plaintiff's mental impairments, is consistent with the opinions of two other physicians rendered during the same period, all of which include marked and severe limitations in Plaintiff's ability to sustain certain basic work activities over a normal workday and workweek. These opinions are also broadly consistent with the opinions rendered by Dr. Yun and Dr. Knapp during the relevant period, who assessed Plaintiff as having a range of moderate, marked, and severe work-related mental health limitations. The Court further concludes that the ALJ's reasons for rejecting all the examining physician's opinion evidence are not supported by substantial evidence. Therefore, reversal is appropriate.

II. Whether the ALJ erred in evaluating Plaintiff's testimony.

Plaintiff argues that the ALJ failed to provide clear and convincing reasons for rejecting Plaintiff's testimony. Dkt. 13 at 18-24. The Court notes that the ALJ rejected Plaintiff's testimony for many of the same reasons he found the medical opinion evidence inconsistent and unpersuasive. Because the Court found the ALJ's reasons for rejecting the opinion evidence unsupported by substantial evidence, the ALJ's reconsideration of this opinion evidence will necessarily impact the ALJ's assessment of this evidence. Plaintiff will also be able to present new evidence and testimony on remand. Therefore, the ALJ shall also reassess Plaintiff's subjective complaints on remand.

III. Remedy

Plaintiff requests that the case be remanded for the award of benefits. Dkt. 13 at 24. In the alternative, Plaintiff requests that the Court reverse and remand the case with instructions for the ALJ to reconsider Plaintiff's testimony and the opinions from Drs. Andersen, Yun, and Knapp.

The Commissioner responds that, if the Court finds that the ALJ committed harmful error, the appropriate remedy is for the Court to remand the case for further proceedings because there are serious doubts Plaintiff is disabled. Dkt. 14 at 14. Specifically, the Commissioner responds that the regulations do not permit a finding of disability while a claimant is engaging in substantial gainful activity and Plaintiff engaged in substantial gainful work for over 6 months during the relevant period. *Id*. at 15. The Commissioner further responds that there "is serious doubt her impairments alone are disabling" because the record contains references "to the exacerbating effects of substance use on Plaintiff's mental health symptoms and functioning." *Id*.

"'The decision whether to remand a case for additional evidence, or simply to award benefits[,] is within the discretion of the court.'" *Trevizo v. Berryhill*, 871 F.3d 664, 682 (9th Cir. 2017) (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). If an ALJ makes an error and the record is uncertain and ambiguous, the Court should remand to the agency for further proceedings. *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017). Likewise, if the Court concludes that additional proceedings can remedy the ALJ's errors, it should remand the case for further consideration. *Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir. 2017).

The Ninth Circuit has developed a three-step analysis for determining when to remand for a direct award of benefits. Such remand is generally proper only where:

> "(1) the record has been fully developed and further administrative proceedings would serve no useful purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ would be required to find the claimant disabled on remand."

Trevizo, 871 F.3d at 682-83 (quoting *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014)). The Ninth Circuit emphasized in *Leon v. Berryhill* that even when each element is satisfied, the District Court still has discretion to remand for further proceedings or for award of benefits. 80 F.3d 1041, 1045 (9th Cir. 2017). For example, the Court has the flexibility to remand a case for further proceedings, even where all the elements are satisfied, when the record as a whole creates "serious doubt that a claimant is, in fact, disabled." *Garrison v. Colvin*, 759 F.3d 995, 1021 (9th Cir. 2014).

Here, this matter must be reversed because the ALJ erred in evaluating the opinions of Drs. Andersen, Yun, and Knapp and in evaluating the testimonial and other evidence with respect to Plaintiff's subjective complaints. However, there are other outstanding issues which must be decided which preclude the Court from awarding benefits.

The ALJ found Plaintiff engaged in substantial gainful activity ("SGA") between October 1, 2016, through December 31, 2016, and April 1, 2017, through June 30, 2017, because Plaintiff earned more than $1,300 per month and $1,170 for those quarters, respectively. *See* AR 782 (citing AR 227-9). Plaintiff contends that her work attempts are considered "unsuccessful work attempts" under the regulations because her work activity at or over the SGA was limited to three months. Dkt. 15 at 1-2, 11-12; Dkt. 13 at 3-4. Plaintiff states that her inability to maintain employment during these periods was due to her mental impairments and is consistent with her employment history showing she worked for 28 different employers between 2001 and 2017. Dkt. 13 at 3-4. However, the ALJ neither explained nor discussed whether these periods met the criteria for "unsuccessful work attempts" under the regulations.[3] *See* AR 72. Therefore, this is an

[3] The ALJ limited the decision to "the period(s) the claimant did not engage in substantial gainful activity" but did not identify that period. *See* AR 782.

issue which must be addressed on remand.[4]

With respect to the Commissioner's argument that Plaintiff's alcohol and marijuana use may be contributing factors to her mental health symptoms and functioning, because the ALJ did not find the Plaintiff disabled the ALJ did not address whether her alcohol and marijuana use were material to her disability. *See* 20 C.F.R. §§ 404.1535, 416.935. As a result, an award of benefits is not appropriate.

Therefore, the ALJ's decision is reversed and remanded for further administrative proceedings with a new Administrative Law Judge in accordance with this Order. On remand, the ALJ shall also address whether Plaintiff's work between October 1, 2016, through December 31, 2016, and April 1, 2017, through June 30, 2017, meets the criteria for "unsuccessful work attempts."

CONCLUSION

Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded Plaintiff was not disabled. Accordingly, Defendant's decision to deny benefits is reversed and this matter is remanded for further administrative hearing with a new Administrative Law Judge in accordance with the findings contained herein.

Dated this 30th day of January, 2023.

David W. Christel
United States Magistrate Judge

[4] Beginning at Step One, the ALJ questioned the reliability of Plaintiff's other statements based on her ability to work SGA. *See* AR 782.